

1 Rick J. Horton (#027589)
2 Lloyd Baker (#027915)
3 **LLOYD BAKER ATTORNEYS**
4 4428 N. 12th Street
5 Phoenix, Arizona 85014
6 Telephone: (602) 265-5555
7 Facsimile: (602) 265-5550
8 E-Mail: rick@bakerattorneys.net
9 *Attorneys for Plaintiff*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 JOSE H. PERALTA, individually,
13 Plaintiff,
14 vs.

No.: CV-17-01868-PHX-DJH(BSB)

FIRST AMENDED COMPLAINT

15 STATE OF ARIZONA; COLONEL FRANK
16 MILSTEAD, in his official capacity as Director
17 of Arizona Department of Public Safety;
18 TROOPER TRACY COLLINS, individually
19 and in her official capacity as a Trooper with
20 the Arizona Department of Public Safety;
21 JOHN DOE OFFICERS, I-X; JANE DOE
22 OFFICERS I-X; JOHN DOE SUPERVISORS,
23 I-X; JANE DOE SUPERVISORS I-X; BLACK
24 CORPORATIONS I-X; and WHITE
25 PARTNERSHIPS, I-X,

Defendants.

(JURY TRIAL DEMANDED)

20 This First Amended Complaint is being filed after the parties have met and conferred and
21 agreed to the filing of this First Amended Complaint and pursuant to the Courts' Order of
22 September 19, 2017 [Doc. 17]. For his First Amended Complaint against the Defendants,
23 Plaintiff Jose H. Peralta, through undersigned counsel, hereby alleges as follows:
24
25

PARTIES

1
2 1. At all times relevant herein, Plaintiff Jose H. Peralta was a citizen of the United
3 States of America and a resident of Maricopa County, Arizona.

4 2. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
5 JOHN DOE OFFICERS I-X, JANE DOE OFFICERS I-X, JOHN DOE SUPERVISORS I-X;
6 JOHN DOES I-X, JANE DOES I-X, BLACK CORPORATIONS I-X and WHITE
7 PARTNERSHIPS I-X. Plaintiffs will amend this Complaint to allege said Defendants' true
8 names and capacities when ascertained.

9 3. Plaintiff is informed and believes and thereon allege that each of the fictitiously
10 named Defendants are responsible in some manner for the occurrences herein alleged.

11 4. Plaintiff is and believes and thereon allege that Plaintiffs' injuries as herein alleged
12 were proximately caused by the acts and/or omissions of said fictitiously named Defendants.

13 5. Defendant State of Arizona ("State") is a body politic.

14 6. Defendant Colonel Frank Milstead ("Milstead") is the Director of the Arizona
15 Department of Public Safety.

16 7. Milstead is a state actor and is the final policymaker for the Arizona Department
17 of Public Safety and is permitted to exercise his authority as Director of the Arizona Department
18 of Public Safety through the use of deputies and officers of the Department of Public Safety.

19 8. Defendant Trooper Tracy Collins ("Collins") is and was at all times relevant herein
20 a Trooper with the Arizona Department of Public Safety and was so at all operative dates and
21 times herein alleged in this Complaint acting in her official capacity as a Trooper with the
22 Arizona Department of Public Safety.

23 9. JOHN DOE OFFICERS, I-X, JANE DOE OFFICERS I-X, JOHN DOE
24 SUPERVISORS, I-X, JANE DOE SUPERVISORS I-X; JOHN DOES I-X; JANE DOES I-X,
25 were duly appointed law enforcement officers, sergeants, lieutenants, detectives and/or deputies,

1 or other officers, officials, executives and policymakers of the State and Arizona Department of
2 Public Safety.

3 10. JOHN DOE OFFICERS I-X, JANE DOE OFFICERS I-X, JOHN DOE
4 SUPERVISORS I-X, JANE DOE SUPERVISORS I-X; JOHN DOES I-X; JANE DOES I-X,
5 were at all times mentioned herein, acting within the course and scope of their employment
6 and/or agency with the State, by and through the Arizona Department of Public Safety, which is
7 liable in respondeat superior for the acts of all Defendants alleged herein.

8 11. At all times mentioned herein, said Defendants JOHN DOE OFFICERS I-X,
9 JANE DOE OFFICERS I-X, JOHN DOE SUPERVISORS I-X, JANE DOE SUPERVISORS I-
10 X; JOHN DOES I-X; JOHN DOES I-X; JANE DOES I-X, were also acting under the color of
11 the law under the laws of the State and County. Said Defendants are sued individually and in
12 their capacities as herein and above-defined employees, agents and representatives of the State
13 and Arizona Department of Public Safety.

14 12. Defendants State and the Arizona Department of Public Safety are encouraged,
15 assisted, ratified and/or with deliberate indifference failed to prevent all of the acts and omissions
16 complained of herein as carried out by themselves, their agents and/or employees.

17 **JURISDICTION AND VENUE**

18 13. This action arises under the Constitution of the United States, particularly the
19 Fourth Amendment, Eighth Amendment, Fourteenth Amendment, and under the laws of the
20 United States, particularly the Civil Rights Act, 42 U.S.C. § 1983, and under Arizona Law.

21 14. This Court has jurisdiction over Plaintiff's Federal Civil Rights claims pursuant to
22 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 28 U.S.C. § 144.

23 15. This Court has supplemental jurisdiction over claims arising under the laws of the
24 State of Arizona pursuant to 28 U.S.C. § 1376 (c).
25

1 16. The acts complained of occurred within Maricopa County, State of Arizona. All
2 Defendants currently reside, or resided at relevant times, within the State of Arizona. Thus,
3 venue is proper in the District of Arizona pursuant to U.S.C. § 1391(b).

4 17. Venue is proper within the District of Arizona pursuant to 28 U.S.C. § 1402(b)
5 because all acts referred to herein occurred within the District of Arizona.

6 18. As to the state claims under Arizona state law, a timely Notice of Claim was served
7 on December 22, 2016 on the Governor and Attorney General of the State and the Risk
8 Management Department of the State, which complied in all ways with A.R.S. § 2-821.01. The
9 claim was acknowledged by Risk Management and has not been denied nor accepted therefore,
10 deemed denied by statute.

11 **STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION**

12 19. Plaintiffs incorporate each and every allegation set forth above as if fully set forth
13 herein.

14 20. On July 2, 2016, Jose Hernandez Peralta was involved in a single motor vehicle
15 incident on southbound Interstate 17 at milepost 206.5 at the Northern Avenue off ramp. After
16 the incident, DPS was called and dispatched Trooper, Tracy Collins to the scene. At the scene
17 of the incident, Mr. Peralta was arrested for suspicion of driving under the influence. The
18 incident report indicates this occurred at approximately 1:42 a.m. Officer, Tracy Collins
19 handcuffed Mr. Peralta behind his back (double locked) and removed all items from his pockets.
20 Officer, Collins then secured Mr. Peralta in the right rear prisoner compartment of the patrol car.

21 21. Officer, Collins then transported Mr. Peralta to the Arizona Department of Public
22 Safety, Knutson Station (KS), located at 2610 South 16th Street, in Phoenix, AZ. Upon arrival,
23 Mr. Peralta stated that he needed to use the restroom. Officer Collins removed Mr. Peralta's
24 handcuffs and showed him to the restroom. After about 5 minutes, Officer Collins knocked on
25 the door to see if Mr. Peralta was OK and no response was given therefore, a male officer entered

1 the restroom to check on Mr. Peralta. Mr. Peralta exited the restroom at which time Officer
2 Collins placed Mr. Peralta back in the handcuffs this time to the front instead of back. At
3 approximately 2:53 a.m., Officer Collins administered Mr. Peralta breath intoxication tests. At
4 approximately, 3:18 a.m., Officer Collins read Mr. Peralta the Independent Test Advisory and
5 placed him in the #3 north holding cell seating him on a bench by himself while still handcuffed.
6 Officer Collins then left the facility, with no supervision over Mr. Peralta, returned to her patrol
7 vehicle to gather Mr. Peralta belongings. Upon her arrival, Officer Collins noticed Mr. Peralta
8 seated on the bench of the holding cell with his hands in his face facing the secured door of the
9 cell. At no time did she go check on him.

10 22. While sitting at her desk facing the computer, Officer Collins heard a loud slam.
11 Officer Collins got up from the desk and looked through the observation window of Mr. Peralta's
12 cell and observed him with his buttocks up, knees bent beneath him, with his head against the
13 cell door and a pooling of blood forming beneath his face. As Officer Collins opened the cell
14 door, Mr. Peralta slid forward as his legs extended, as they were in contact with the base of the
15 bench. Officer Collins told Mr. Peralta to roll over onto his back however, Mr. Peralta advised
16 that he could not. Officer Collins then grabbed Mr. Peralta by his belt loops, rolled him to the
17 right and onto his back. Additionally, Officer Collins then grabbed the back of Mr. Peralta's
18 shirt by the collar and pulled him out into the hallway attempting to forcefully straighten his
19 body and head. Then using his shirt once again, Officer Collins dragged Mr. Peralta down the
20 hallway approximately 12 feet.

21 23. On July 2, 2016, Jose Peralta sustained serious injuries while being held at the DPS
22 Knutson Station located at 2610 South 16th Street, in Phoenix while in the custody and control
23 of DPS Officer, Collins. While in the holding cell and in the custody of the Arizona Department
24 of Public Safety, Mr. Peralta sustained injuries which caused paralysis from the neck down.
25 Phoenix Fire Department arrived and transported him to Maricopa Integrated Health System

(MIHS) where he underwent two neck surgeries due to his cervical spinal cord injury. The Arizona Department of Public Safety had the duty to ensure the safety of persons being booked into custody and while under their control. Officer Collins breached these duties and responsibilities by not ensuring the safety and care of Mr. Peralta while in custody of the Department of Public Safety.

24. The State of Arizona, through its agency the Department of Public Safety and the employees, officers and/or agents of the same, was negligent, grossly negligent, carelessness and violated the standard of care for law enforcement agencies and officers. The negligence, gross negligence, carelessness and breach of the standard of care by the State of Arizona and its agents caused or contributed to the permanent and catastrophic injuries suffered by Mr. Peralta as described herein. Upon information and belief, the Department of Public Safety and its agents responsible for holding Mr. Peralta failed to follow policies and protocols designed to minimize the risk of injury to persons like Mr. Peralta in the custody of DPS and its agents. DPS and its agents were responsible for Mr. Peralta at all times while in the custody and control of DPS and DPS and its agents' failure to comply with the standard of care for a law enforcement officer caused or contributed to Mr. Peralta's catastrophic and permanent injuries.

CLAIMS FOR RELIEF

COUNT ONE: NEGLIGENCE

[As Against Defendant State of Arizona]

25. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

26. During and throughout the detention of Jose Peralta, Defendants had a duty of care to protect Jose Peralta from harms against which he was unable to protect himself. This included the physical harm suffered by Mr. Peralta as well as the necessary medical care and attention to be provided to Mr. Peralta under the circumstances.

1 33. Defendants, while acting in their official capacity as duly appointed, qualified and
2 acting policy officer employed by the State of Arizona and the Arizona Department of Public
3 Safety while acting within the course and scope of their employment and acting under color of
4 law, negligently and recklessly allowed for a caused to be allowed Jose Peralta to be permanently
5 injured and not rendering appropriate medical care and attention all demonstrating deliberate
6 indifference to the health, safety and medical needs of Jose Peralta through their policies,
7 practices and procedures.

8 34. At the time of the complained-of events, the Fourteenth Amendment to the United
9 States Constitution clearly established Mr. Peralta's right to not be deprived of his life, liberty,
10 or property without due process of law.

11 35. At the time of the complained-of events, any reasonable police officer would have
12 known that the Constitution clearly establishes the right of American citizens to be deprived of
13 their life, liberty, safety, or property without due process of law.

14 36. Specifically, the Due Process Clause of the Fourteenth Amendment to the United
15 States Constitution forbids a state actor from being deliberately indifferent to the medical needs
16 of a pretrial detainee.

17 37. At all times relevant to this Complaint, Defendants were acting under color of law,
18 under the constitution, statutes, administrative rules, customs, policies and usages of the County
19 of Maricopa, State of Arizona and the United States and had assumed the responsibilities,
20 activities and rights involved in exercising their roles as employees of the State's professional
21 staff.

22 38. The conduct of the Defendants as alleged herein, violated the Plaintiff's right to
23 be secure in his person, safe from harm while in the custody of the Arizona Department of Public
24 Safety along with unreasonable seizures and unreasonable use of force and confinement as
25 guaranteed by the Fourth Amendment of the United States Constitution.

1 39. Defendant Collins violated these rights when she kept Mr. Peralta handcuffed after
2 processing him for booking had been complete and placing him in a jail cell against the policy
3 of the Arizona Department of Public Safety.

4 40. Additionally, Defendant Collins violated these rights by rendering grossly
5 insufficient, below standard of care emergency medical attention to Mr. Peralta after he advised
6 Defendant Collins of his injuries. This is further supported by Defendant Collins own
7 admissions that she was never trained in how to render assistance and care for a neck injury in
8 an emergency situation.

9 41. Internal review of the facts of the incident by the Arizona Department of Public
10 Safety revealed deficiencies in the areas of policy, procedure and equipment. This is supported
11 in their findings of a deficiency in Central Patrol Bureau Order 02-01, Officer Security and
12 Prisoner Processing.

13 42. Arizona Department of Public Safety investigation further revealed deficiencies in
14 the monitoring of prisoners along with the necessity to upgrade the divisions panic button to
15 allow for a quicker response time.

16 43. As a direct and proximate result of Defendants wrongful conduct as alleged herein,
17 Jose Peralta's constitutional rights were violated and Plaintiff has suffered greatly.

18 44. The acts and omissions of Defendants, acting under color of law as alleged herein,
19 were outrageous, wanton, malicious, punitive, abusive, and in reckless disregard to Mr. Peralta's
20 rights.

21 45. By reason of the foregoing, punitive damages, in an amount to be determined upon
22 the trial of this action, should be awarded against Defendants to punish them for wrongdoing
23 and to prevent them and others from acting in a similar manner.

1 51. Furthermore, Defendants, State, the Arizona Department of Public Safety and
2 Defendant Milstead have been aware of extensive documentation of numerous acts and instances
3 of individuals in custody, resulting in serious injuries.

4 52. Defendants, through its elected and appointed officials, knew or should have
5 known that unconstitutional policies, practices, customs and training existed in the operation of
6 the Arizona Department of Public Safety as it relates to the interaction between officers and
7 detainees and yet they failed to properly address such improper policies and practices and failed
8 to implement appropriate policies and procedures and training in order to ensure such actions as
9 the injuries to Jose Peralta to ever take place.

10 53. Said longstanding customs and official policies also called for Defendants not to
11 discipline, prosecute or objectively investigate or in any way deal with or respond to known
12 incidents the relevant stations of the Arizona Department of Public Safety such as the Kntuson
13 Station of ever being investigated.

14 54. The wrongful conduct of the Defendants as alleged herein, constituted the
15 violation of 42 U.S.C. § 1983 in that they deprived Jose Peralta of the rights, privileges and
16 immunities secured to him by the Constitution and laws of the United States.

17 55. As a direct and proximate result of the wrongful conduct of Defendants, decedent's
18 constitutional rights were violated and Plaintiff has and will continue to suffer in the future.

19 56. As a result, compensatory, general, and special damages, in an amount to be
20 determined upon a trial of this action, should be awarded against the Defendants plus punitive
21 damages to punish for the wrongdoing and to prevent other municipalities from acting in a
22 similar manner in the future. In addition, Plaintiffs seek an award of attorneys' fees pursuant to
23 42 U.S.C. § 1983.

1 57. The above-mentioned incident and resulting injuries to Jose Peralta were caused
2 by the careless, negligent, and unlawful acts and/or omissions of Defendants and/or its agents
3 and employees.

4 58. As a direct and proximate result of the careless, negligent, and unlawful acts and/or
5 omissions of Defendants and their employees, through its agents/employees, Plaintiff has forever
6 injured and permanently been impaired and damaged in an amount to be proven at the time of
7 trial.

8 59. As a direct and proximate result of the conduct and negligence of the Defendants
9 causing the injuries to Jose Peralta, Plaintiff has incurred expenses associated with his injuries
10 including, but not limited to, medical expenses, future medical expenses as well as lost wages
11 and has, thereby, suffered special damages in an amount to be proven at the time of trial.

12 **COUNT FOUR: SUPERVISORY RESPONSIBILITY**

13 **[Against State and Milstead]**

14 60. Plaintiffs incorporate each and every allegation set forth above as if fully set forth
15 herein.

16 61. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth and
17 Fourteenth Amendments to the United States Constitution.

18 62. Defendants State, The Arizona Department of Public Safety and Milstead and
19 JOHN DOE OFFICERS I-X, JANE DOE OFFICERS I-X, JOHN DOE SUPERVISORS I-X,
20 JANE DOE SUPERVISORS I-X; JOHN DOES I-X and JANE DOES I-X in doing all the
21 things herein alleged above, acted with the deliberate indifference to the health, safety and
22 welfare of the detainee at their stations, that Defendants and each of them supervised. Said
23 Defendants, through their inquiry and investigation, were aware of ongoing detainee safety
24 along with improper medical care and treatment including all conduct such as alleged herein.
25

63. Despite this knowledge, these Defendants failed to take action to stop such egregious misconduct. By doing so, said Defendants allowed such actions to occur included the injuries sustained by Jose Peralta.

64. The aforementioned acts, omissions, systematic deficiencies, policies, procedures, customs and practices of Defendants resulted in the aforementioned civil rights violations, causing injuries to Jose Peralta.

COUNT FIVE:
Article 2, Sections 2, 4 and 15 of the Arizona Constitution

[As Against Defendant State of Arizona]

65. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

66. Article 2, section 2 of the Arizona Constitution guarantees persons due process of law, and Article 2, section 4 of the Arizona Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law, and Article 2, section 15 of the Arizona Constitution forbids cruel and unusual punishment. For the reasons set forth above, Defendants’ conduct violated these constitutional provisions.

67. As a direct result of the Defendants’ breaches of the Arizona Constitution, Jose Peralta suffered permanent injuries and disability.

68. As a further result of Defendants’ breaches of the Arizona Constitution, Plaintiff suffered harm and losses including but not limited to: (1) the loss of physical abilities; (2) loss of being able to care for himself; (3) the pain and suffering experienced in the past, currently experiencing and to be expected in the future; (4) medical expenses both past, present and future as well as lost wages; (5) loss in the enjoyment of life.

1 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

2 69. For special damages in an amount sufficient to compensate Plaintiff in an amount
3 sufficient to compensate same for past, present and future economic losses together with interest
4 thereon at the highest lawful rate from the date said expenses occurred or the date of judgment,
5 whichever is sooner;

6 70. For general damages, in an amount sufficient to compensate Plaintiff. in an amount
7 to be proven at the time of trial together with interest thereon at the highest lawful rate from the
8 date of judgment until paid in full;

9 71. For special damages in an amount sufficient to compensate Plaintiffs for past,
10 present and future medical expenses in an amount to be proven at the time of trial together with
11 interest thereon from the date said expenses were incurred until paid in full;

12 72. Punitive damages to punish and deter the reprehensible conduct alleged in this
13 Complaint;

14 73. Attorneys' fees pursuant to 42 U.S.C. § 1988;

15 74. For interest at the highest legal rate on all damages and costs from the time incurred
16 on the date of such judgment, whichever is sooner, until paid; and

17 75. For such other and further relief as the Court may deem just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff demands a jury trial, pursuant to the Seventh Amendment to the Constitution of
20 the United States, as to all issues and claims for damages.

21
22 //

23 //

24 //

25 //

1 **DATED** this 20th day of November, 2017.

2
3 **LLOYD BAKER INJURY ATTORNEYS**

4
5
6 By: /s/ Rick J. Horton
7 Rick J. Horton, Esq.
8 Lloyd W. Baker, Esq.
9 Attorneys for Plaintiff

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on this 20th day of November, 2017 I electronically transmitted
12 the attached document to the Clerk of the Court using the CM/ECF System.

13 I further certify that on the same date, the attached document was automatically sent
14 to the following, who are registered participants of the CM/ECF System;

15 Michael G. Gaughan, Esq. (010245)
16 Connie T. Gould, Esq. (013544)
17 Assistant Attorney General
18 1275 West Washington Street
19 Phoenix, Arizona 85007-2926
20 DefensePhx@azag.gov
Michael.Gaughan@azag.gov
Connie.Gould@azag.gov
Attorneys for State Defendants

21 By: /s/ Julia Halbmaier
22
23
24
25